

William Paul,
and
Christop. Clithero,

Esqs; Plaintiffs.

Sir John Shaw, Barr^t, Defend^t.
in Error.

An ACTION of Indebitatus Assumpsit was brought in Michaelmas Term, 1705. Being the Fourth Year of Her present Majesty's Reign, by the Plaintiffs against the Defendant, for the Sum of 6000 l. and upon Trial, the Jury found A Special Verdict, setting forth in Substance as follows, Viz.

THAT the Plaintiffs are Lessees or Farmers under Sir William Waller's Patent of the *Prizage*, which was an Ancient Duty belonging to the Crown, of one Ton of Wine for every Ship Importing Ten Ton, and under Twenty; and of Two Tons, for every Ship Importing Twenty Tons or above, payable in Specie by *Englishmen* and *Denizens*, the said Two Tons to be taken, One before, and the other behind the Malt.

That Sir John Shaw the Defendant, is Collector of the Duties on Wines Imported into the Port of London, and that the Sum for which the ACTION is brought, was deposited in the Defendant's Hands, with Intent, That if the said *Prizage Wines* were chargeable with the *New Subsidy of Tonnage* (which is a Duty laid by the Act of 9th and 10th Will. 3. Cap. 23.) then the same should remain in his Hands for the Queen's Use, but if those Wines were not chargeable, then the Money should be restor'd to the Plaintiffs.

They find likewise, That *Prizage Wines* had paid several Duties, viz. the Impost laid by the Act 1 Jac. 2. Cap. 3. the *Additional Impost* by the Act 4th and 5th Will. and Mary, Cap. 5. and the Duty of 25 l. per Ton, payable by the 7th and 8th Will. 3. Cap. 20. and that these several Duties had been constantly submitted to, and paid by the Farmers of the *Prizage*.

Lastly, They find the Act of *Tonnage*, made 12th Car. 2. Cap. 4. and a particular Clause therein, which Declares and Enacts, That *Prizage Wines* ought not to pay *Tonnage* or *Custom*, and shall not be charg'd with the Payment of any *Custom*, *Subsidy*, or Sum of Money imposed upon Wines by this Act, or any thing therein contained.

Upon which *Special Verdict*, the Sole Question before the Court was, and still is, this, viz.

WHETHER *Prizage Wines* are chargeable with the Payment of the said New or Second Subsidy, laid by the said Act of 9th and 10th Will. 3.

THE Court of Exchequer, the 28th Novemb. 1707. gave Judgment for the Plaintiffs, That *Prizage Wines* ought not to pay this Duty, Mr. Baron Price dissenting from the other three Barons, and A Writ of Error being brought in the Exchequer-Chamber, and the Case being argued several times by the Queen's Council for Sir John Shaw, on behalf of the Crown, and the Judges of the Courts of *Queen's Bench* and *Common Pleas*, having by themselves apart, and together at a Meeting at *Serjeants Inn*, consider'd the Case in *Hilary Term* last, the Lord Chancellor and the said Judges were all of Opinion, That *Prizage Wines* ought to pay the Duties, and thereupon in the same Term the Judgment of the Court of Exchequer was reversed, and this Writ of Error is now brought to set aside the Judgment so given in the Exchequer Chamber.

But 'tis humbly hop'd, That the said Judgment shall stand, and that Your Lordships will be of Opinion, That *Prizage Wines* ought to pay the said Subsidy, laid by the said Act of 9th and 10th Will. 3. for these Reasons, Viz.

I. The General Words of the said Act, which gives the Duty, extend to all Wines; and the *Proviso* in the Statute 12th Car. 2. which gives the Exemption to *Prizage Wines*, extends only to the Duties which were impos'd by that Act; and it will be absurd to construe them to extend to Acts not then in being, so as to discharge any Duties granted by subsequent Acts; and there is no *Proviso* for Exempting *Prizage Wines* more than any other Wines in the said Act of 9th and 10th Will. 3. and the Clause in that Act referring to the Act of 12 Car. 2. is only for the Methods of collecting this new Duty, as the *Tonnage* and *Poundage*, was to be collected for the Benefit of the Crown by that Act; but cannot introduce any Exemption without express Words for that Purpose, which are not found in this Act.

II. The Act of 1st Jac. 2. by a particular Clause does say, "That the Merchant Importer shall not be charged with the Duty arising on *Prizage Wines*, but that the same shall be paid by the Farmer of the *Prizage Wines*, who is thereby appointed to pay the same: And there is the same Clause in the Act of 22 Car. 2. Cap. 3. which plainly shews the Judgment of both those Parliaments to be that *Prizage Wines* were chargeable with the Duty impos'd by those Acts: For those Acts do not by express Words charge the Duty; but take Notice they were charged, and settles by whom those Charges are to be paid.

III. If it be Objected, That *Prizage Wines* did not pay any of the Duty imposed by the Act of *Coynage*, 18th Car. 2. Cap. 5. and therefore they ought not to pay the Duties imposed by the Act 9th and 10th Will. 3. It is Answered, That the *Coynage Duty* being given over and above all former Duties, it was apprehended by the Collectors of those Duties, that *Prizage Wines* were not charged with that *Additional Duty*, because at that Time *Prizage Wines* were in truth charged with no former Duties, yet that Matter had never any Judicial Determination; but when the Statute of 9th and 10th Will. 3. gives those *Additional Duties* over and above all former Duties, and it is agreed *Prizage Wines*, as well as other Wines at that time, paid three several former Duties. The Words (*Over and above*) most plainly lay the Additional Charge in this Case.

IV. It is Objected, That the Subsidy laid by the Act of 9th and 10th Will. 3. is on Wines Imported by Way of Merchandize, and *Prizage Wines* Originally belonging to the Crown, can't be said to be Imported by Way of Merchandize: To which it is Answered, The whole Cargo is imported by Way of Merchandize, and the Farmer is to take the *Prizage Wines* after Importation, but the Words (*Imported generally*) and (*Imported by way of Merchandize*) are used promiscuously in the several Acts above mentioned for one and the same Thing, and both are of the same Force and Signification; and therefore no great Weight can be laid upon those Expressions.

WHEREFORE 'tis pray'd, That the Judgment given in the Exchequer Chamber may be affirmed by Your Lordships.

NOTE, The Deposits which at the Time of the Commencement of this ACTION came to 6000 l. are now increased to 15000 l. besides 5000 l. and upwards in the Hands of the Plaintiffs or their Agents, and if they should prevail in this Case, it's justly apprehended they will then carry on their Claim to be Exempt from the Duties given by the Acts of 4th and 5th Will. and M. and of 7th and 8th Will. 3. which have been paid, and for which there will be the same Pretence as in this Case, although they have been submitted to; and then the Crown may be obliged to return out of the Customs paid, far greater Sums of Money, TO THE INCREASE OF THE PUBLICK DEBT.

Edw. Northey.
Rob. Raymond.

The Duty of 9th and 10th Will. 3. is laid thus, viz. Over and above all Subsidies of Tonnage and Poundage, Over and above all Additional Duties and Impositions whatsoever due or payable for, or upon any Wines, Goods, or Merchandizes, there shall be Raised, Levied and Paid, One other Subsidy called Tonnage, for, and upon all Wines, &c.